

By: Harris

S.B. No. 1159

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of persons who repossess motor vehicles;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Occupations Code, is amended by adding Chapter 902 to read as follows:

CHAPTER 902. REPOSSESSION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 902.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(4) "Lender" means:

(A) a state or national bank;

(B) a state or federal savings and loan association or savings bank;

(C) a state or federal credit union; or

(D) a person that holds a license issued under Chapter 348, Finance Code.

(5) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

1 (6) "Repossession" means the recovery of a motor
2 vehicle that has been sold or leased under a security agreement that
3 contains a repossession clause by an individual authorized by the
4 legal owner, lienholder, or lessor to recover the motor vehicle.

5 (7) "Repossession agent" means an individual who
6 engages in a repossession for consideration.

7 (8) "Repossession company" means a business entity
8 that primarily engages in the business of performing, or advertises
9 that the business entity performs, repossessions for
10 consideration.

11 Sec. 902.002. ADMINISTRATION OF CHAPTER. The department
12 shall administer this chapter.

13 [Sections 902.003-902.050 reserved for expansion]

14 SUBCHAPTER B. GENERAL POWERS AND DUTIES

15 Sec. 902.051. RULES. The commission may adopt rules
16 necessary to administer this chapter.

17 Sec. 902.052. FEES. The commission may by rule set fees in
18 amounts reasonable and necessary to administer this chapter.

19 Sec. 902.053. DIRECTORY OF LICENSE HOLDERS. (a) The
20 department shall annually prepare a directory of license holders.

21 (b) The department shall provide the directory to the public
22 on request without charge.

23 (c) The department may comply with this section by
24 publishing the directory online.

25 Sec. 902.054. INVESTIGATIONS. (a) The department may
26 examine:

27 (1) a record maintained under this chapter; or

1 (2) a record or object the department determines is
2 necessary to conduct a complete investigation.

3 (b) To administer this chapter, the department may question
4 a person who:

5 (1) is associated with the business of a license
6 holder; or

7 (2) claims that the person was negatively affected by
8 a violation of this chapter committed by a license holder.

9 Sec. 902.055. AUDIT. The department may periodically
10 audit the business records of a license holder.

11 Sec. 902.056. ADVISORY COMMITTEE. (a) The presiding
12 officer of the commission, with the commission's approval, shall
13 appoint an advisory committee to advise the department in
14 administering this chapter, or the commission in adopting rules
15 under this chapter.

16 (b) A committee must include persons with experience in the
17 repossession industry.

18 (c) The presiding officer of the commission, with the
19 commission's approval, shall appoint the presiding officer of a
20 committee established under this section.

21 [Sections 902.057-902.100 reserved for expansion]

22 SUBCHAPTER C. LICENSE REQUIREMENTS

23 Sec. 902.101. LICENSE REQUIRED. (a) Except as provided by
24 Subchapter F, a person may not engage in a repossession for
25 consideration unless each individual who engages in the recovery
26 holds a repossession agent license.

27 (b) A person may not advertise that the person performs

1 repossessions unless the person holds a repossession company
2 license.

3 (c) A person may not hire a person to engage in a
4 repossession unless the hired person holds a license issued under
5 this chapter.

6 Sec. 902.102. LICENSE CLASSIFICATIONS. The department
7 shall issue a repossession agent or repossession company license to
8 an eligible applicant.

9 Sec. 902.103. LICENSE APPLICATION. (a) A license
10 applicant must submit an application on a form prescribed by the
11 department.

12 (b) The application must specify the class of license for
13 which the applicant is applying.

14 (c) An application for a repossession agent license must be
15 accompanied by:

16 (1) the application fee; and

17 (2) the examination fee.

18 (d) An application for a repossession company license must
19 be accompanied by:

20 (1) the application fee;

21 (2) the license number of each employee who holds a
22 repossession agent license; and

23 (3) a copy of the current sales tax permit issued to
24 the applicant by the comptroller under Chapter 151, Tax Code, or, if
25 the department determines that technology allows, the applicant may
26 submit the applicant's tax identification number to the department
27 for submission by the department to the comptroller for electronic

1 verification.

2 (e) The department shall deny an application provided under
3 Subsection (d) if the applicant's sales tax permit is canceled,
4 suspended, or revoked under Subchapter F, Chapter 151, Tax Code.

5 Sec. 902.104. ELIGIBILITY REQUIREMENTS FOR REPOSSESSION
6 AGENT LICENSE; BACKGROUND CHECK. (a) An applicant for a
7 repossession agent license must be at least 18 years old.

8 (b) The department shall conduct a criminal background
9 check on the applicant as authorized by Chapter 411, Government
10 Code.

11 (c) The applicant is not eligible for a license if the
12 applicant has been finally convicted of a felony or misdemeanor
13 that directly relates to the duties and responsibilities of the
14 licensed occupation.

15 (d) The executive director may deny an application if the
16 applicant previously held a repossession agent license and the
17 license was revoked.

18 (e) Except as provided by Subsection (c), Chapter 53 applies
19 to this chapter.

20 Sec. 902.105. EXAMINATION FOR REPOSSESSION AGENT LICENSE.
21 (a) The executive director shall require an examination for a
22 repossession agent license.

23 (b) The executive director shall prescribe the method and
24 content of the examination and shall set compliance requirements
25 for the examination.

26 (c) The examination shall be offered at least annually or
27 more frequently as determined by the executive director.

1 (d) The examination shall be offered at various locations in
2 this state as determined by the executive director.

3 Sec. 902.106. EXAMINATION RESULTS. (a) Not later than the
4 30th day after the date on which a person takes a licensing
5 examination under this chapter, the department shall notify the
6 person of the results of the examination.

7 (b) If the examination is graded or reviewed by a testing
8 service:

9 (1) the department shall notify the person of the
10 results of the examination not later than the 14th day after the
11 date the department receives the results from the testing service;
12 and

13 (2) if notice of the examination results will be
14 delayed for longer than 90 days after the examination date, the
15 department shall notify the person of the reason for the delay
16 before the 90th day.

17 (c) The department may require a testing service to notify a
18 person of the results of the person's examination.

19 (d) If requested in writing by a person who fails a
20 licensing examination administered under this chapter, the
21 department shall furnish the person with an analysis of the
22 person's performance on the examination.

23 Sec. 902.107. ISSUANCE OF LICENSE; TERM. (a) On payment
24 of the license fee, the department shall issue the appropriate
25 license to an applicant who:

26 (1) meets the requirements of this subchapter;

27 (2) provides evidence of any insurance coverage

1 required by the executive director in accordance with this chapter;
2 and

3 (3) passes the examination, if the application is for
4 a repossession agent license.

5 (b) A license is valid for one year from the date of
6 issuance.

7 Sec. 902.108. RULES REGARDING RENEWAL. The commission may
8 adopt rules regarding the renewal of a license, including rules
9 requiring confirmation of the continued eligibility of the license
10 holder before renewal.

11 Sec. 902.109. LICENSE EXPIRATION AND RENEWAL. (a) A
12 person who is otherwise eligible to renew a license may renew an
13 unexpired license by paying the required renewal fee to the
14 department before the expiration date of the license. A person
15 whose license has expired may not engage in activities that require
16 a license until the license has been renewed.

17 (b) A person whose license has been expired for 90 days or
18 less may renew the license by paying to the department a renewal fee
19 that is equal to 1-1/2 times the normally required renewal fee.

20 (c) A person whose license has been expired for more than 90
21 days but less than one year may renew the license by paying to the
22 department a renewal fee that is equal to two times the normally
23 required renewal fee.

24 (d) A person whose license has been expired for one year or
25 more may not renew the license. The person may obtain a new license
26 by complying with the requirements and procedures, including any
27 examination requirements, for obtaining an original license.

1 (e) A person who was licensed in this state, moved to
2 another state, and is currently licensed and has been in practice in
3 the other state for the two years preceding the date of application
4 may obtain a new license without reexamination. The person must pay
5 to the department a fee that is equal to two times the normally
6 required renewal fee for the license.

7 (f) Not later than the 30th day before the date a person's
8 license is scheduled to expire, the department shall send written
9 notice of the impending expiration to the person at the person's
10 last known address according to the records of the department.

11 Sec. 902.110. BOND AND INSURANCE REQUIREMENTS. The
12 commission by rule shall set bond and insurance requirements for
13 license holders.

14 Sec. 902.111. CONTINUING EDUCATION REQUIREMENTS FOR
15 REPOSSESSION AGENTS. (a) The commission by rule shall require
16 continuing education as a condition for renewal of a repossession
17 agent license.

18 (b) The continuing education requirements may not exceed
19 four hours annually.

20 Sec. 902.112. CONTINUING EDUCATION PROVIDERS AND COURSE
21 APPROVAL. (a) The commission by rule shall recognize, prepare, or
22 administer continuing education programs for repossession agent
23 license holders.

24 (b) The commission by rule shall recognize and approve
25 continuing education providers.

26 Sec. 902.113. RECIPROCITY; WAIVER OF LICENSE REQUIREMENT.
27 The commission may waive any prerequisite to obtaining a license

1 for an applicant after reviewing the applicant's credentials and
2 determining that the applicant holds a license issued by another
3 jurisdiction that has licensing requirements substantially
4 equivalent to those of this state.

5 Sec. 902.114. PROVISIONAL REPOSSESSION AGENT LICENSE.

6 (a) The department may issue a provisional repossession agent
7 license to an applicant currently licensed in another jurisdiction
8 who seeks a license in this state and who:

9 (1) has been licensed in good standing as a
10 repossession agent for at least two years in another jurisdiction,
11 including a foreign country, that has licensing requirements
12 substantially equivalent to the requirements of this chapter;

13 (2) has passed a national or other examination
14 recognized by the executive director relating to repossession
15 procedures and requirements; and

16 (3) is sponsored by a person licensed by the
17 department under this chapter with whom the provisional license
18 holder will practice during the time the person holds a provisional
19 license.

20 (b) The executive director may waive the sponsorship
21 requirement under Subsection (a)(3) for an applicant if the
22 executive director determines that compliance with that
23 subdivision would be a hardship to the applicant.

24 (c) A provisional license is valid until the date the
25 department approves or denies the provisional license holder's
26 application for a repossession agent license.

27 (d) The department shall issue a repossession agent license

1 under this chapter to a provisional license holder if:

2 (1) the provisional license holder is eligible to be
3 licensed under Section 902.113 or passes the part of the
4 examination under Section 902.105 that relates to the applicant's
5 knowledge and understanding of the laws and rules of this state
6 relating to repossession; and

7 (2) the executive director verifies that the
8 provisional license holder satisfies any other applicable
9 licensing requirements under this chapter.

10 (e) The executive director must approve or deny a
11 provisional license holder's application for a repossession agent
12 license not later than the 180th day after the date on which the
13 provisional license is issued. The executive director may extend
14 the 180-day period if the results of an examination have not been
15 received by the department before the end of that period.

16 (f) The commission may prescribe a fee for provisional
17 licenses in an amount reasonable and necessary to cover the cost of
18 issuing the license.

19 [Sections 902.115-902.150 reserved for expansion]

20 SUBCHAPTER D. OPERATION OF REPOSSESSION COMPANY; FACILITY
21 REQUIREMENTS

22 Sec. 902.151. DEFINITION. In this subchapter, "storage
23 facility" means the area in which a repossession company stores a
24 repossessed motor vehicle.

25 Sec. 902.152. OFFICE; HOURS. A repossession company shall
26 maintain a permanent office with regular office hours of at least
27 eight hours each day Monday through Friday, excluding legal

1 holidays, during which a person may claim personal property from a
2 repossessed motor vehicle.

3 Sec. 902.153. CUSTODY AND CONTROL OF MOTOR VEHICLE. A
4 repossession company may maintain possession of a repossessed motor
5 vehicle until the vehicle is sold at auction or otherwise
6 transferred to a person with the right to possess the vehicle.

7 Sec. 902.154. STORAGE OF REPOSSESSED MOTOR VEHICLE. A
8 repossession company shall store a repossessed motor vehicle inside
9 a storage facility that complies with the requirements of this
10 subchapter.

11 Sec. 902.155. ENCLOSURE AND SECURITY AT FACILITY.

12 (a) Each storage facility must be:

13 (1) completely enclosed by a fence at least six feet
14 high; and

15 (2) locked when the license holder or an employee of
16 the license holder is not at the facility.

17 (b) A repossession company shall secure a repossessed motor
18 vehicle to prevent theft of the vehicle and its contents, including
19 locking doors, closing windows and hatchbacks, and raising or
20 covering convertible tops.

21 Sec. 902.156. FACILITY SURFACE. A storage facility must
22 contain an all-weather surface such as concrete, asphalt, blacktop,
23 stone, macadam, limestone, iron ore, gravel, shell, or caliche.
24 The surface must enable the safe and effective movement of the
25 vehicle on all portions of the lot, both under the vehicle's own
26 power and under tow, at all times and regardless of weather
27 conditions.

1 Sec. 902.157. FACILITY LIGHTING. A repossession company
2 shall maintain lighting at the storage facility sufficient to allow
3 inspection of a repossessed motor vehicle for damage at the time of
4 the vehicle's release, including at least a 250-watt light bulb for
5 each quarter acre of storage area.

6 Sec. 902.158. FACILITY SIGNS. A repossession company shall
7 post a clearly visible and readable sign at the storage facility's
8 main entrance. The sign must:

9 (1) use letters at least two inches in height, with
10 contrasting background;

11 (2) be visible from at least 10 feet;

12 (3) contain the street address of the facility; and

13 (4) contain the repossession company's name, address,
14 telephone number, office hours, and license number.

15 Sec. 902.159. SHARING OF STORAGE FACILITY PROHIBITED. A
16 repossession company may not share a storage facility with another
17 repossession company, unless each company is owned by the same
18 person.

19 Sec. 902.160. ENTRY OF TOW TRUCKS. A repossession company
20 may not permit a tow truck to enter its storage facility unless the
21 tow truck is registered under Chapter 643, Transportation Code.

22 [Sections 902.161-902.200 reserved for expansion]

23 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

24 Sec. 902.201. USE OF PROPER TOWING EQUIPMENT. A
25 repossession agent may not engage in a repossession unless the tow
26 truck used by the agent complies with:

27 (1) commission rules regarding safety; and

1 (2) all other applicable local, state, and federal
2 rules and laws, including Subchapter E, Chapter 643, Transportation
3 Code, and rules adopted under that subchapter.

4 Sec. 902.202. USE OF FORCE; BREACH OF THE PEACE. A
5 repossession agent may not use force or breach the peace when
6 engaging in a repossession.

7 Sec. 902.203. EMPLOYMENT OR HIRING OF REPOSSESSION AGENT.
8 (a) A licensed repossession agent may not engage in a repossession
9 unless the agent is hired or employed by a licensed repossession
10 company or a lender.

11 (b) A person may not hire or employ a licensed repossession
12 agent unless the person is a licensed repossession company or a
13 lender.

14 Sec. 902.204. DUTY TO REPORT REPOSSESSION TO LAW
15 ENFORCEMENT. Not later than two hours after engaging in a
16 repossession, a repossession agent shall report the repossession to
17 the police department of the municipality in which the recovery
18 occurred or, if the recovery was not in a municipality having a
19 police department, to the sheriff of the county in which the
20 recovery occurred. The report must include:

21 (1) the license number and telephone number of each
22 repossession agent engaging in the repossession;

23 (2) the location at which the repossession occurred
24 and the location at which the motor vehicle is stored; and

25 (3) a description of the motor vehicle recovered,
26 including identification information such as a vehicle
27 identification number and the state and number of a license plate.

1 Sec. 902.205. RETAIL SERVICES PROHIBITED. A repossession
2 agent may not sell the agent's repossession services directly to
3 the public.

4 Sec. 902.206. COLLECTION OF MONEY PROHIBITED. A
5 repossession agent may not accept an assignment to collect money.

6 [Sections 902.207-902.250 reserved for expansion]

7 SUBCHAPTER F. ADDITIONAL REPOSSESSION AND STORAGE REQUIREMENTS FOR
8 MOTOR VEHICLE DEALERS AND LENDERS

9 Sec. 902.251. DEFINITION. In this subchapter, "dealer"
10 means a person who holds a general distinguishing number issued by
11 the Motor Vehicle Board of the Texas Department of Transportation
12 under Chapter 503, Transportation Code.

13 Sec. 902.252. LICENSE NOT REQUIRED FOR CERTAIN
14 REPOSSESSIONS BY MOTOR VEHICLE DEALERS OR LENDERS. A repossession
15 agent who is not licensed may engage in a repossession if the person
16 is employed by:

17 (1) a lender who has received less than 20 motor
18 vehicles by repossession in the calendar year; or

19 (2) a dealer or lender, if:

20 (A) the person who has custody or control of the
21 motor vehicle agrees to the repossession;

22 (B) a tow truck is not used for the repossession;

23 and

24 (C) the motor vehicle moves under its own power
25 and meets all required safety standards.

26 Sec. 902.253. STORAGE OF REPOSSESSED MOTOR VEHICLE. (a) A
27 dealer or lender may store a motor vehicle repossessed under this

1 subchapter on the property of the dealer or lender.

2 (b) Before storing the motor vehicle, the dealer or lender
3 must inventory the personal property in the vehicle.

4 (c) A licensed repossession agent hired or employed by a
5 lender may store a motor vehicle on the lender's property after
6 engaging in a repossession for the lender.

7 [Sections 902.254-902.300 reserved for expansion]

8 SUBCHAPTER G. ENFORCEMENT

9 Sec. 902.301. CEASE AND DESIST ORDERS. The department may
10 issue a cease and desist order.

11 Sec. 902.302. CIVIL PENALTIES. (a) Except as provided by
12 Subsection (b), a person who violates this chapter is subject to a
13 civil penalty under Section 51.352 of not less than \$2,000 for the
14 first violation and not less than \$4,000 for each subsequent
15 violation.

16 (b) A repossession company or lender who violates this
17 chapter is subject to a civil penalty of not less than \$4,000 for
18 the first violation and not less than \$8,000 for each subsequent
19 violation.

20 Sec. 902.303. CRIMINAL PENALTY. (a) A person commits an
21 offense if the person knowingly engages in a repossession without
22 holding a license issued under this chapter.

23 (b) Each repossession of a motor vehicle constitutes a
24 separate offense.

25 (c) An offense under this section is a Class B misdemeanor.

26 SECTION 2. (a) A person is not required to obtain a license
27 under Subchapter C, Chapter 902, Occupations Code, as added by this

1 Act, until September 1, 2006.

2 (b) The Texas Commission of Licensing and Regulation shall
3 adopt rules as required by Chapter 902, Occupations Code, as added
4 by this Act, not later than June 1, 2006.

5 SECTION 3. (a) Except as provided by Subsection (b) of
6 this section, this Act takes effect September 1, 2005.

7 (b) Section 902.101 and Subchapters D, E, F, and G, Chapter
8 902, Occupations Code, as added by this Act, take effect September
9 1, 2006.